

CONTRACT CONFLICT OF INTEREST PROVISIONS FOR WASD CONSENT DECREE PROGRAM

1. Policy. Miami-Dade County (the “County”), through its Water and Sewer Department (WASD) adopts the provisions of this section to govern potential conflicts of interest in its procurement of consultants to implement the Wastewater Consent Decree Program (the “Program”). It is the policy of the County, implemented through this section, to identify, analyze and address organizational conflicts of interest that might otherwise exist in order to maintain the public’s trust in the integrity and fairness of the County’s contracting for the Program and to protect the business interests of the County thereby safeguarding public dollars. This policy shall be supplemental to and not in derogation of the requirements of law relating to conflicts of interest including, but not limited to, the County’s Code of Ethics. The restrictions set forth in this policy are intended to cover both the prime consultant and any of its sub-consultants.

2. Definitions. An organizational conflict of interest means a situation in which a consultant: (a) under the contract, or any part thereof, including a particular work order or defined task, is required to exercise judgment to assist the County in a matter (such as in drafting specifications or assessing another consultant’s or contractor’s proposal or performance) and the consultant has a direct or indirect financial or other interest at stake in the matter, so that a reasonable person might have concern that when performing work under the contract, the contractor may be improperly influenced by its own interests rather than the best interest of the County, or (b) would have an unfair competitive advantage in a County competitive solicitation as a result of having performed work on a County contract that put the consultant in a position to influence the result of the solicitation. An organizational conflict of interest may arise out of the involvement of the consultant, its affiliates, or their employees. Affiliates means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both. Prime consultants shall be the consultants selected to contract directly with the County for each of the anticipated five contracts under the Program.

3. Advance restrictions on prime consultants. To prevent organizational conflicts of interest in the Program, the County anticipates awarding five separate contracts, each to a different prime consultant for the following scopes of services: (a) Program Management Consultant, (b) Capacity Management, Operation and Maintenance (CMOM) Program Consultant, (c) Design of Wastewater Treatment Plant Capital Improvements, (d) Design of Wastewater Collection and Transmission Systems Capital Improvements, and (e) Construction Phase Services for Capital Improvements. The Scope of Services for each of the five separate contracts is described within each independent solicitation. While consultants will be permitted to submit proposals for more than one contract, it is anticipated that the County will award each prime consultant only one contract.

It is anticipated that the County will select first the prime consultant for Program Management Consultant. The prime consultant selected as a Program Management Consultant shall not participate as a sub-consultant to any other prime consultant.

The advance restrictions set forth in this section apply to both consultants and their affiliates. In the event that consultants apply as joint ventures, the advance restrictions set forth in this section shall apply to each of the members of the joint venture.

The County may award a contract notwithstanding the restrictions set forth in this section upon a finding that, following competition, the restriction prevents the County from contracting with the sole responsive and responsible contractor offering to provide the services in terms acceptable to the County.

4. Certification of no organizational conflict of interest. The consultant's: (a) execution of the contract or any agreement to perform any work under a work order or (b) making an claim for payment under the contract, constitutes the consultant's certification to the County that the consultant does not have knowledge of any organizational conflicts of interest to exist in performing the work under the contract. False certifications may be considered a material breach of the contract and the consultant may be liable to the County for a false claim under the County's false claim ordinance. At any time in anticipation of awarding the contract, or during the performance of the contract, the County may require the consultant to execute an express written certification that after diligent inquiry the consultant does not have knowledge of any organizational conflict of interest. The County may also require the consultant to set forth in writing the scope of the inquiry conducted to make the express certification. Failure to make diligent inquiry, to disclose a known conflict or potential conflict, or to execute the documents required to be produced may be considered, if pre-award, a reason for disqualification of the proposal, and following award, a material breach of the contract.

5. Identification of organizational conflict of interest. The consultant shall be obligated to disclose to the County any organizational conflict of interest, or the potential for the same to occur, immediately upon its discovery. The disclosure shall be in writing, addressed to the Contract Manager identified in the contract specifications. The disclosure shall identify the organizational conflict of interest with sufficient detail for the County's analysis and shall propose a method to address the same. The consultant's failure to identify an organizational conflict of interest, or to disclose the same to the County in the manner set forth in this Section, may be considered a material breach of the contract. Each solicitation shall also require respondents to address the methodology proposed to identify and address any potential organizational conflict of interest, particularly in those instances where the proposer offers to use the same sub-consultants which may be primes or sub-consultants in other Program contracts. The potential for organizational conflicts of interest, and the methodology offered to prevent organizational conflicts of interest, may be evaluated by the County as a criterion for selection as set forth in the applicable competitive solicitation documents.

6. Addressing organizational conflicts of interest. The County will analyze and address organizational conflicts of interest on a case-by-case basis, because such conflicts arise in various, and often unique, factual settings. The Director of WASD, with the assistance of such other persons as he may deem appropriate, shall make the final decision of how to address an organizational conflict of interest. The County shall consider the specific facts and circumstances of the contracting situation and the nature and potential extent of the risks associated with an organizational conflict of interest when determining

what method or methods of addressing the conflict will be appropriate. When an organizational conflict of interest is such that it risks impairing the integrity of the Program, then the County must take action to substantially reduce or eliminate those risks. If the only risk created by an organizational conflict of interest is a performance risk relating to the County's business interests, then the County shall have broader discretion in accepting some or all of the performance risk, but only when the potential harm to the County's interest is outweighed by the expected benefit from having the conflicted consultant perform the contract.

7. Measures to address organizational conflicts of interest. The measure, or combination of measures, which may be appropriate to address an organizational conflict of interest, if any, shall be decided by the Director of WASD and include, but are not limited to: (a) avoidance of risk through reduction of subjectivity in the analysis or by defining work tasks and deliverables with specificity, (b) requiring the prime and/or its subs to implement structural barriers (firewalls) and internal corporate controls, (c) limiting sub-consultants or personnel to be involved in a work assignment, (d) employing specific hourly limits on defined tasks, (e) limiting or prohibiting certain pass through fees and markups, (f) executing a mitigation plan which will define specific consultant and sub-consultant duties to mitigate organizational conflicts of interest, (g) requiring sub-consultants who are conflict free to perform identified areas of work, (h) requiring the consultant or its sub-consultants to adopt, disseminate and instruct staff on conflict of interest identification and remediation procedures and (i) relying on more than one source or on objective or verifiable data or information.

8. Documentation and evaluation. The Director of WASD will set forth in the contract file a written explanation of the methodology used to address an identified organizational conflict of interest. The County shall periodically evaluate the effectiveness of the methodology in the protection of the Program.

9. Organizational conflicts of interest which are not remedied. If in the sole discretion of the County there is no measure or combination of measures which protect the County against the organizational conflict of interest, then the consultant may not perform the subject work. The County may in its discretion, if prior to award, decide not to award the contract to the affected consultant, and following award, terminate the contract, or portion of the contract, which the consultant has materially breached because of such inability to perform.